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No. 82-1877

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

MARIO VALDERRAMA LITONJUA,
ET AL., RESPONDENTS

BRIEF OF RESPONDENT MARIO VALDERRAMA LITONJUA IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether the Court should grant the petition in this individual case in view of the equitable considerations involved.

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REASONS FOR DENYING THE PETITION

ARGUMENT

I

Mario Litonjua is a citizen of the United States now, having been naturalized on May 16, 1983 pursuant to the

mandate of the Court of Appeals for the Ninth Circuit [Petition for Writ of Certiorari at 9, n. 9; hereafter, Petition]. In addition, this case is completely different from those of the 14 other respondents with whom he is associated in the Government's petition. Those respondents stipulated with the Government that their cases were identical to those of the Category II veterans granted naturalization in In Re Naturalization of 68 Filipino War Veterans, 406 F. Supp. 931 (N.D. Cal. 1975), in that they made no efforts to apply for naturalization during the period of validity of the war-time statute [Petition at 4]. Litonjua, however, actually filed an application for naturalization in August 1946, but his argument in the Court of Appeals that he should be deemed to have constructively

filed his petition before the statutory deadline was not reached by that court because of its resolution of the case on another ground [Petition, Appendix A at 5a, n. 3; Barretto v. United States, 694 F. 2d 603, 605, n. 3 (9th Cir., 1983)]. Thus, should this Court eventually rule in favor of the Government on the issue of collateral estoppel, Mr. Litonjua would still have a chance to have his naturalization case sustained on that alternate ground should his case be remanded to the Court of Appeals.

II

The Government seems to consider the issue of collateral estoppel to be of particular importance in this case [Petition at 9]. However, the Government's position is not harmed if its petition is denied insofar as it relates

to Mr. Litonjua. This Court has already granted the Government's petition in the case of Mendoza v. United States, 672 F. 2d 1320, cert. granted, No. 82-849 (Jan. 24, 1983), a case which squarely confronts the issue of collateral estoppel. In addition, 14 other veterans remain in the instant case with the identical issue. The denial of the Government's petition in Mr. Litonjua's case would not prejudice the Government, which could still get its desired review of the collateral estoppel issue.

CONCLUSION

Mr. Litonjua, a United States Navy veteran with 5 years of honorable wartime service and a former prisoner of war of the Japanese, has finally obtained United States citizenship some 37 years after filing his original application for

naturalization in Seattle, Washington. That prized status should not now be disturbed in view of Mr. Litonjua's contribution to and sacrifices for the United States in World War II. He should not have to undergo the heavy additional expense of defending his case in this Court and, if reversed and remanded, of again prosecuting his case in the Court of Appeals upon those additional issues left open by that Court in its original opinion.

The additional burden upon Mr. Litonjua becomes more apparent when contrasted with the almost negligible effect upon the Government which will, in any event, have its review of the law of collateral estoppel in the case of Mendoza, supra, and in the cases of the 14 other veterans in the instant petition. Mr. Litonjua's hard-won citizenship works no offense to

the Government in its pursuit of legal principles, and it would be inequitable to disturb it now in view of his war-time sacrifices for that same Government.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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June 21, 1983